

Judge: Chief Judge Karen A. Overstreet  
Chapter: 13  
Case No.: 10-13386  
Adversary No.: 10-01515-KAO

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In re  
Daniel G. Benedict and Vernita J.  
Benedict  
Debtor(s).

CASE NO. 10-13386  
ADVERSARY NO. 10-01515-KAO  
EX PARTE DEFAULT JUDGMENT  
ORDER

Daniel G. Benedict and Vernita J.  
Benedict  
Plaintiff(s),  
v.  
GMAC Mortgage LLC,  
Green Tree Servicing LLC,  
Defendants.

**I. JUDGMENT SUMMARY**

1.1 There is no monetary judgment in this case. The Judgment is only for injunctive relief.

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## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, having reviewed the pleadings and files herein, and being otherwise fully informed on the premises does hereby make the following findings of fact:

- 2.1 The Debtors did file a bankruptcy petition in the above numbered case.
- 2.2 The Court has jurisdiction to hear the matter as a core proceeding.
- 2.3 The aforementioned Defendants are an apparent servicer of creditor and secured creditor of the Plaintiffs.
- 2.4 Defendants were served properly and more than thirty (30) have elapsed with no response.
- 2.5 A separate order has been issued granting a default against Defendants.
- 2.6 Defendants hold the second mortgage on the Debtors' principal residence.
- 2.7 The value of said residence, as established by the Comparable Market Analysis in conjunction with the estimate of cost of replacing the failed windows, has been established to have had, at or near the time of the Debtors' bankruptcy filing, a fair market value of \$119,559.41.
- 2.8 The Debtors' residence is subject to the following mortgages:
  - a. Deutsche Bank National Trust Company, acting on behalf of Wells Fargo, as per Proof of Claim No. 9: \$126,683.62
    - i. Applicable Deed of Trust in favor of Wells Fargo, N.A. was signed by Debtors on or about: August 28, 2004.
  - b. Green Tree Servicing, LLC, apparently acting on behalf of Creditor, as per Proof of Claim 12: \$34,426.64
    - i. Applicable Deed of Trust was signed by Debtors on or about: November 10, 2006.
- 2.9 The second mortgage was granted for the following described real property:

Unit 202, Building A, Northwind Park Condominium, a Condominium, according to the Declaration recorded under recording number 200407090328, and any amendments thereto, and in survey map and plans recorded under recording number 200407095359, records Snohomish County, Washington. Together with limited common areas.

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Commonly known as, 17124 44th Ave W, #A202, Lynnwood, WA 98037.

2.10 The second mortgage is wholly unsecured.

2.11 Pursuant to 11 U.S.C. §506, the second mortgage of Defendants should be stripped from the real property at issue, scheduled as an unsecured debt, and said lien against the Debtors' principal residence should be voided.

### III. ORDER.

NOW, THEREFORE, it is hereby ordered as follows:

3.1 The Plaintiffs/Debtors are granted a Default Judgment against Defendants.

3.2 For purposes of the Debtors' chapter 13 plan only, the foregoing described lien (the "Lien") is valued at zero, the lienholder does not have a secured claim, and the Lien may not be enforced, pursuant to 11 U.S.C. §§506, 522(f), 1322(b)(2), and 1327.

3.3 This Order shall become part of the Debtors' confirmed chapter 13 plan.

3.4 Upon entry of a discharge in the Debtors' chapter 13 case, the Lien shall be voided for all purposes, and upon application by the Debtor, the Court will enter an appropriate form of judgment voiding the Lien.

3.5 If the Debtors' chapter 13 case is dismissed or converted to one under another chapter before the Debtors obtains a discharge, this order shall cease to be effective and the Lien shall be retained to the extent recognized by applicable nonbankruptcy law, and upon application by the lienholder, the Court will enter an appropriate form of order restoring the Lien.

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1 3.6 Except as provided by separate, subsequent order of this Court, the Lien may not be enforced so  
2 long as this Order remains in effect.  
3

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5  
6 Dated this \_\_\_\_ day of \_\_\_\_\_, 2010.  
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10   
11 United States Bankruptcy Judge A. OVERSTREET  
12 (Dated as of Entered on Docket date above)

13 Presented by:

14 EDWARD P. SAGER, PLLC

15 By: /s/ Edward P. Sager

16 Edward P. Sager, WSBA #27236

17 Attorney for Debtor  
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